

1 STATE OF OKLAHOMA

2 1st Session of the 55th Legislature (2015)

3 COMMITTEE SUBSTITUTE

4 FOR

5 SENATE BILL 419

6 By: Justice

7 COMMITTEE SUBSTITUTE

8 An Act relating to entomology and plant industry;
9 amending 2 O.S. 2011, Sections 3-32.7 and 3-82, which
10 relate to nursery and pesticide licenses, permits,
11 and registration requirements; clarifying statutory
12 language; removing reexamination requirement;
13 requiring the department to make certain allocations;
14 and providing an effective date.

15 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

16 SECTION 1. AMENDATORY 2 O.S. 2011, Section 3-32.7, is
17 amended to read as follows:

18 Section 3-32.7. A. The fee for each grower or dealer, each
19 license issued or renewed, and each inspection conducted shall be as
20 follows:

21 1. Grower's license fee - shall be Twenty ~~five~~ Five Dollars
22 (\$25.00) for each business location;

23 2. Grower's inspection fee - shall be One Dollar (\$1.00) per
24 acre or 1000 square feet of greenhouse area inspected; and

1 3. Dealer's license fee - shall be Thirty ~~eight~~ Eight Dollars
2 (\$38.00) for each business location.

3 B. No fee shall be charged for a grower's license issued to any
4 scientific, agricultural, or horticultural club, educational or
5 eleemosynary institution, or any department or branch of the state
6 or federal government.

7 C. All licenses shall expire at a date to be determined by the
8 State Board of Agriculture. Failure to remit the license fee by the
9 15th of the month following the expiration month shall result in a
10 penalty fee equal to the cost of the license.

11 D. A person shall obtain a license prior to selling or dealing
12 in nursery stock.

13 E. All licenses are nontransferable upon any change of
14 ownership.

15 F. All penalties, fees, and monies collected under this program
16 shall be paid to the ~~State~~ Oklahoma Department of Agriculture, Food,
17 and Forestry and deposited in the State Department of Agriculture
18 Revolving Fund.

19 SECTION 2. AMENDATORY 2 O.S. 2011, Section 3-82, is
20 amended to read as follows:

21 Section 3-82. A. LICENSE REQUIRED - 1. It shall be unlawful
22 for any person to act, operate, or do business or advertise as a
23 commercial, noncommercial, certified applicator, temporary certified
24 applicator, service technician, or private applicator unless the

1 person has obtained a valid applicator's license issued by the State
2 Board of Agriculture for the category of pesticide application in
3 which the person is engaged.

4 2. A license may be issued by the Board in any category of
5 pesticide application if the applicant qualifies and the applicant
6 is limited to the category of pesticide application named on the
7 license. The Board may establish categories of pesticide
8 application as necessary. Licenses shall be issued upon application
9 to the Board on a form prescribed by the Board. The application
10 shall contain information regarding the applicant's qualifications,
11 proposed operations, and other information as specified by the
12 Board.

13 3. a. An aerial license shall not be issued or be valid
14 unless the applicant files with the Board a copy of a
15 valid document issued by the Federal Aviation
16 Administration showing that the person is qualified to
17 operate or supervise the operation of an aircraft
18 conducting agricultural operations. Applicants for an
19 aerial license and pilots working under a license may
20 be subject to a complete and thorough background
21 examination.

22 b. The Board shall promulgate rules regarding aerial
23 applicators and applications consistent with federal
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1 law and shall solicit the assistance of the Federal
2 Aviation Agency in the enforcement of this subsection.

3 4. Each business location shall require a separate license and
4 separate certified applicator except that a certified applicator for
5 a noncommercial business location may also serve as the certified
6 applicator for one commercial business location.

7 5. A license shall not be issued for the category of pesticide
8 application of any applicant or representative who has a temporary
9 certification.

10 B. CERTIFICATION REQUIRED - 1. A license shall be issued only
11 after satisfactory completion of the certification standards by the
12 person who shall be the certified applicator under the license.
13 Temporary certified applicators do not qualify as the certified
14 applicator for a license, nor may they act as a certified
15 applicator. The Board shall deny the application for certification,
16 recertification, issuance, or renewal of a certificate or license
17 for a failure to show proper qualification under the rules or for
18 violations of any provisions of this ~~subarticle~~ section. A
19 certificate in any category shall be valid for five (5) years unless
20 suspended, canceled, or revoked by the Board or until
21 recertification is required for the category, and may be renewed
22 after successful completion of recertification requirements. The
23 Board may require certified applicators to be recertified once in a
24 five-year period.

1 2. A certified service technician identification shall be
2 issued upon application and completion of certification standards
3 determined by the Board. Temporary certified applicators may
4 qualify as a certified service technician. No person shall act, do
5 business as, or advertise as a service technician unless the person
6 has met all the qualifications and standards as required by the
7 Board. The service technicians' identification shall be issued in
8 the name of the licensed entity. The licensee shall ensure that the
9 service technician identification is returned to the Board upon
10 termination of the employee. A service technician identification
11 shall be valid for a period of five (5) years unless suspended,
12 canceled, or revoked by the Board, until recertification is required
13 by the Board, or until the service technician leaves the employ of
14 the licensed entity. The Oklahoma Department of Agriculture, Food,
15 and Forestry may issue a service technician identification upon
16 completion of the following:

- 17 a. a determination is made by the Department that the
18 applicant has successfully completed the written
19 examination,
- 20 b. the licensed entity provides a completed service
21 technician identification application form at the time
22 of testing, and
- 23 c. all appropriate fees are paid at the time of testing.

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1 3. Each license, except for private applicators, shall expire
2 on the 31st day of December following issuance or renewal, and may
3 be renewed for the ensuing calendar year, without penalty or
4 reexamination, if a properly completed application is filed with the
5 Board not later than the 1st day of January of each year. If
6 application is not received by that date, a penalty of twice the
7 amount of the renewal fee shall be charged for renewal of the
8 license. ~~After the 1st day of February, in addition to the penalty,~~
9 ~~a reexamination shall be required.~~

10 All private applicator licenses are in effect for five (5) years
11 and may be renewed by application after completion of a continuing
12 education program or written exam approved by the Board.

13 C. The following fees shall be paid to the Board:

14 1. A fee of One Hundred Dollars (\$100.00) for each category of
15 pesticide application shall be paid to the Board for the issuance or
16 renewal of a commercial applicator business license. Not more than
17 Five Hundred Dollars (\$500.00) total category fees shall be charged
18 annually to any business location of an applicator;

19 2. A fee of Fifty Dollars (\$50.00) shall be paid to the Board
20 for each written examination conducted by the Board;

21 3. A fee of Fifty Dollars (\$50.00) shall be paid to the Board
22 for each practical examination conducted by the Board;

23 4. A fee of Twenty Dollars (\$20.00) shall be paid to the Board
24 for the issuance or renewal of a private applicator's license;

1 5. A fee of Fifty Dollars (\$50.00) shall be paid to the Board
2 for the issuance or renewal of a noncommercial business license.
3 Not more than Two Hundred Fifty Dollars (\$250.00) total category
4 fees shall be charged annually to any noncommercial business
5 location of an applicator;

6 6. A fee of Twenty Dollars (\$20.00) shall be paid to the Board
7 for the issuance or renewal of service technician identification;

8 7. A fee of Ten Dollars (\$10.00) shall be paid to the Board for
9 the issuance of duplicate licenses or certificates or transfer of
10 service technician identification;

11 8. No fees shall be charged to governmental agencies or their
12 employees in the discharge of their official duties;

13 9. A fee of Fifty Dollars (\$50.00) shall be paid to the Board
14 for each recertification procedure; and

15 10. A fee of One Hundred Dollars (\$100.00) shall be paid to the
16 Board for each reciprocal certification procedure for applicator
17 certifications.

18 D. All fees shall be deposited in the State Department of
19 Agriculture Revolving Fund.

20 E. Fees shall be paid to the Board prior to the processing of
21 any application.

22 F. Failure to pay any fee identified with licenses, permits,
23 pesticide registrations, or certification shall require the Board to
24 deny the application.

1 G. INSURANCE REQUIRED - 1. The Board shall not issue a
2 commercial applicator's license until the applicant has furnished
3 evidence of an insurance policy or certificate by an insurer or
4 broker authorized to do business in this state insuring the
5 commercial applicator and any agents against liability resulting
6 from the operations of the commercial applicator. The insurance
7 shall not be applied to damage or injury to agricultural crops,
8 plants, or land being worked upon by the commercial applicator.

9 2. The amount of liability shall not be less than that set by
10 the Board for each property damage arising out of actual use of any
11 pesticide. The liability shall be maintained at not less than that
12 sum at all times during the licensing period. The Board shall be
13 notified fifteen (15) days prior to any reduction in liability.

14 3. If the furnished liability becomes unsatisfactory, the
15 applicant shall immediately execute new liability upon notice from
16 the Board. If new liability is not immediately obtained, the Board
17 shall, upon notice, cancel the license. It shall be unlawful for
18 the person to engage in the business of applying pesticides until
19 the liability is brought into compliance and the license reinstated.

20 H. DAMAGES - 1. Prior to filing an action against an
21 applicator for damages to growing crops or plants, any person
22 alleging damages to growing crops or plants shall:

23 a. within ninety (90) calendar days of the date that the
24 alleged damages occurred or prior to the time that

1 twenty-five percent (25%) of the allegedly damaged
2 crops or plants are harvested, whichever occurs first,
3 file a written complaint statement with the Department
4 regarding the alleged damages, and

5 b. between the date of filing of the written complaint
6 pursuant to subparagraph a of this paragraph and the
7 date harvesting or destruction of the allegedly
8 damaged crops or plants occurs, allow the applicator
9 and the representatives of the applicator reasonable
10 access to the property to inspect and take samples of
11 the allegedly damaged crops or plants during
12 reasonable hours. The representatives of the
13 applicator may include, but not be limited to, crop
14 consultants, bondsmen, and insurers. Nothing in this
15 subparagraph shall limit in any way the harvesting or
16 destruction of the allegedly damaged crops or plants
17 in the ordinary course of business and practice.

18 2. Any person failing to comply with paragraph 1 of this
19 subsection shall be barred from filing an action for damages against
20 the applicator.

21 I. PERMIT REQUIRED - 1. It shall be unlawful for any person to
22 sell, offer for sale, or distribute within this state any restricted
23 use pesticide without first obtaining a restricted use pesticide
24 dealer's permit issued by the Board.

1 2. A permit may be issued by the Board in any category of
2 pesticide sales if the applicant qualifies under the provisions of
3 this ~~subarticle~~ section and the applicant is limited to the category
4 of pesticide sales named on the permit. The Board may establish
5 categories of pesticide sales as necessary.

6 3. The permit shall be issued only upon application on a form
7 prescribed by the Board and the application shall contain
8 information regarding the applicant's proposed operation and other
9 information as specified by the Board.

10 4. Each business location engaged in the sale or distribution
11 of restricted use pesticides shall require a separate permit.

12 5. The annual permit fee for a restricted use pesticide dealer
13 permit shall be Fifty Dollars (\$50.00) for each location.

14 6. The Board may require a certified applicator to be present
15 at any location where designated restricted use pesticide sales
16 occur.

17 J. PESTICIDE REGISTRATION REQUIRED - 1. Every pesticide or
18 device distributed, sold, or offered for sale within this state or
19 delivered for transportation or transported in intrastate or
20 interstate commerce shall be registered with the Board.

21 2. The registrant shall file with the Board a statement
22 including, but not limited to:
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- 1 a. the name and address of the registrant and the name
2 and address of the person whose name shall appear on
3 the label, if other than the registrant,
4 b. the name of the pesticide or device,
5 c. a complete copy of the labeling accompanying the
6 pesticide or device and a statement of all claims to
7 be made for it, and directions for use, and
8 d. if requested by the Board, a full description of the
9 tests made and the results upon which the claims are
10 based. In renewing a registration, a statement shall
11 be required only with respect to information which is
12 different from the information furnished when the
13 pesticide or device was last registered.

14 3. Each registrant shall pay to the Board an annual
15 registration fee of One Hundred Sixty Dollars (\$160.00) for each
16 pesticide or device label registered. These fees shall be used by
17 the Oklahoma Department of Agriculture, Food, and Forestry for
18 purposes of administering pesticide management programs. A portion
19 of these fees, in the amount of ~~One Hundred Thousand Dollars~~
20 ~~(\$100,000.00)~~ Three Hundred Thousand Dollars (\$300,000.00) annually,
21 shall be dedicated for conducting programs for unwanted pesticide
22 disposal. This amount shall be deposited into the State Department
23 of Agriculture Unwanted Pesticide Disposal Fund and shall be
24 dedicated for this use only.

1 4. The Board may require the submission of the complete formula
2 of any pesticide. Trade secrets and formulations submitted by the
3 registrant may be kept confidential. If it appears to the Board
4 that the composition of the pesticide is adequate to warrant the
5 proposed claims and if the pesticide, its labeling, and other
6 material required to be submitted comply with the requirements of
7 this ~~subarticle~~ section, then the pesticide shall be registered.

8 5. If it does not appear to the Board that the pesticide or
9 device is adequate to warrant the proposed claims for it or if the
10 pesticide or device, its labeling, and other material required to be
11 submitted do not comply with the provisions of this ~~subarticle~~
12 section, it shall notify the applicant of the deficiencies in the
13 pesticide, device, labeling, or other material required and afford
14 the applicant an opportunity to make the necessary corrections. If
15 the applicant claims, in writing, that the corrections are not
16 necessary and requests in writing a hearing regarding the
17 registration of the pesticide or device, the Board shall provide an
18 opportunity for a hearing before refusing to issue the registration.
19 In order to protect the public, the Board may at any time cancel the
20 registration of a product or device. In no event, shall
21 registration of a pesticide or device be considered as a defense or
22 excuse for the commission of any offense prohibited under this
23 ~~subarticle~~ section.

1 6. The Board may require that pesticides be distinctively
2 colored or discolored to protect the public health.

3 7. Registration shall not be required in the case of a
4 pesticide shipped from one plant or place within this state to
5 another plant or place within this state that is operated by the
6 same person.

7 K. CATEGORIES OF LICENSES AND PERMITS - The Board may establish
8 any category of license for pesticide application or any category of
9 permit for pesticide sales.

10 L. PERMIT AND PESTICIDE REGISTRATION EXPIRATION - 1. All
11 permits for pesticide sales shall be issued for a period of one (1)
12 year and the permits shall be renewed annually and shall expire on a
13 date determined by the Board. A permit may be renewed for the
14 ensuing year, without penalty, if a properly completed application
15 is filed with the Board not later than the fifteenth day of the
16 month first following the date of expiration. If the application is
17 not received by that date, a penalty of twice the amount of the
18 renewal fee shall be charged for renewal of the permit.

19 2. All pesticide registrations shall be issued for a period of
20 one (1) year. The registration shall be renewed annually and shall
21 expire on a date to be determined by the Board. Pesticide
22 registrations may be renewed for the ensuing year, without penalty,
23 if a properly completed application is filed with the Board not
24 later than the fifteenth day of the month first following the date

1 of expiration. If the application is not received by that date, a
2 penalty of twice the amount of the renewal fee shall be charged for
3 renewal of the pesticide registration.

4 M. PESTICIDE PRODUCING ESTABLISHMENTS - 1. Definitions as used
5 in this ~~subarticle~~ subsection:

6 a. "establishment" means any site where a pesticide
7 product, active ingredient or device is produced
8 within the state,

9 b. "produce" means to manufacture, prepare, propagate,
10 compound or process any pesticide or to package,
11 repackage, label, relabel or otherwise change the
12 container of any pesticide or device, and

13 c. "producer" means any person who produces,
14 manufactures, prepares, compounds, propagates or
15 processes any active ingredient, pesticide, or device
16 as used in producing a pesticide.

17 2. It shall be unlawful for any person to produce within this
18 state any pesticide, active ingredient or device without first
19 obtaining a pesticide producer establishment permit issued by the
20 Board.

21 3. The permit shall be issued only upon application on a form
22 prescribed by the Board. The application shall contain information
23 regarding the proposed operation of the applicant and other
24 information as specified by the Board. If at any time there is a

1 change of the information provided in or on the application for a
2 pesticide producer establishment permit, the producer must notify
3 the Board in writing within thirty (30) calendar days of the change.

4 4. The producer shall file a statement with the Board including
5 but not limited to:

6 a. the name and address of the company,

7 b. the name and address of the establishment as well as
8 the physical location, if different than the mailing
9 address,

10 c. the name of any pesticide, active ingredient, or
11 device, and

12 d. the name and address and other pertinent contact
13 information for the responsible party.

14 5. All permits for pesticide producer establishments shall be
15 issued for a period of one (1) year and shall be renewed annually.

16 All permits shall expire on June 30 each year and may be renewed
17 without penalty if a properly completed application is filed with
18 the Board not later than the fifteenth day of the month first
19 following the date of expiration. If the application is not
20 received by that date, a penalty of twice the amount of the renewal
21 fee shall be charged for renewal of the permit.

22 6. Each pesticide producer establishment location engaged in
23 the production of pesticides, active ingredients or devices shall
24 require a separate permit.

1 7. The annual permit fee for a pesticide producer establishment
2 shall be One Hundred Dollars (\$100.00) for each location.

3 8. If requested by the Board, a complete copy of all labeling,
4 Material Safety Data Sheets, technical information associated with
5 the pesticide, active ingredient, or device and a statement of all
6 claims to be made as well as directions and use must be submitted to
7 the Board.

8 9. In order to determine compliance with state and federal
9 laws, the Board may request a full disclosure of inventory records,
10 sales and distribution records, and any other information deemed
11 necessary by the Board.

12 10. Every producer shall keep accurate records pertaining to
13 pesticide, active ingredient, or device production and distribution
14 as required by the Board. The records of the producer shall be kept
15 intact at the principal producing location in this state for at
16 least two (2) years after the date of production and distribution
17 and copies shall be furnished to any authorized agent of the Board,
18 immediately upon request in person, at any time during the regular
19 business hours of the producer. Copies of records shall be
20 furnished to any authorized agent of the Board within seven (7)
21 working days of a written request, in summary form, by mail, fax, e-
22 mail, website, or any other electronic media customarily used.

23 N. COMPLAINT RESOLUTION - Upon receipt of a written complaint,
24 the Board shall notify the person filing the complaint in writing of

1 its receipt and status within two (2) working days. The person whom
2 the complaint is filed against shall also be notified within two (2)
3 working days. Notification that a complaint has been filed may also
4 be given to the landowner or operator when appropriate. The
5 resolution of a complaint is the completion of the appropriate
6 administrative, jurisdictional, or legal remedies to the extent
7 possible by the Department. The complainant shall be notified in
8 writing within seven (7) working days after resolution of the
9 complaint.

10 SECTION 3. This act shall become effective November 1, 2015.

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